

## **EXHIBIT P-15**

### **Motion for Access to Employment Records**

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SECOND JUDICIAL DISTRICT COURT  
DAVIS COUNTY, FARMINGTON DEPARTMENT

LVNV Funding LLC  Plaintiff,  vs.  Luis Gallegos, an individual , Defendant.	<b>MOTION FOR ORDER TO PERMIT ACCESS TO DEFENDANT'S EMPLOYMENT RECORDS</b>  Case No.: 149700262  Judge: DAVID CONNORS
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COMES NOW, Plaintiff LVNV Funding LLC, by and through its attorney, Gregory M. Constantino, and moves the Court, pursuant to *Utah Code 35A-4-314*, for an order requiring the State of Utah, Department of Workforce Services, Unemployment Insurance Division, to provide Plaintiff's attorney with the name and address of the last known employer of the Defendant Luis Gallegos. This motion is supported by the attached Statement of Facts, the attached Memorandum of Points and Authorities, and a copy of the Judgment attached as Exhibit A.

**STATEMENT OF FACTS**

1. Judgment was entered against Defendant and in favor of Plaintiff on February 18, 2014 in the amount of \$1860.79. A true and accurate copy of the judgment is attached to this Motion as Exhibit A.
2. The judgment attached as Exhibit A remains outstanding, and unsatisfied. The outstanding balance as of March 5, 2014 is **\$1862.42**.

3. Constantino Law Office, P.C., stands ready and willing to: (1) provide the Department of Workforce Services with a copy of the Order requiring disclosure; (2) Enter into a written agreement with the Division, in a form approved by the division; (3) Pay the Department of Workforce Services a reasonable fee that reflects the cost for processing the request as established by the Department; and (4) Comply with the data safeguard and security measures described in *20 C.F.R. Sec. 603.9* with respect to the information received from the Department.

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

##### **1. Employment Information is No Longer Protected Information as applied to qualifying Judgment Creditors.**

Generally speaking, Employment Information held by the State of Utah, Department of Workforce Services is maintained as “private records” under *Utah Code 63G-2-202*. See *Utah Code 35A-7-107*. Senate Bill 281, enacted in the 2013 legislative session, has broadened access to Employment Information, marked as “private records”. Senate Bill 281 amended *Utah Code 35A-4-312*, such that it now provides:

“The information obtained by the division<sup>1</sup> under this section may be disclosed to:

...

(o) a creditor, under a court order, to collect on a judgment as provided in Section 35A-4-314.”  
*Utah Code 35A-4-312(5)(o)*

This information was already available to: (1) the Office of Recovery Services for the enforcement of Child Support orders; (2) State Agencies that administer public assistance programs, and (3) the State Office of Debt Collection. See *Utah Code 35A-7-107*. Now, it is available to judgment creditors who move the Court for an order pursuant to *Utah Code 35A-4-*

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<sup>1</sup> The “division” as used in Utah Code 35A-4-312 and 314 refers to the Unemployment Insurance Division. See Utah Code 35A-4-201.

314.

**2. Utah Code 35A-4-314 provides a Motion procedure, in which the Judgment Creditor may move the Court for an Order which requires the Division to Disclose Employment Information.**

The Division is required to disclose to a judgment creditor the name and address of the last known employer of the debtor, if the judgment creditor moves the Court for an Order, and serves said motion on the Division and on the judgment debtor. *Utah Code 35A-4-314*. The Judgment Creditor is further required to (1) provide the Department of Workforce Services with a copy of the Order requiring disclosure; (2) Enter into a written agreement with the Division, in a form approved by the Division; (3) Pay the Department of Workforce Services a reasonable fee that reflects the cost for processing the request as established by the Department; and (4) Comply with the data safeguard and security measures described in *20 C.F.R. Sec. 603.9* with respect to the information received from the Department.

In this instance, Plaintiff is requesting that the information be released to Plaintiff's attorney. Plaintiff's attorney will comply with the aforementioned requirements stated in *Utah Code 35A-4-314*.

**3. The Division's grounds for objecting to the disclosure are severely limited, and the Division has the burden of proof in making the objection.**

*Utah Code 35A-4-314(2)(a)* provides that a "Court shall grant an order to disclose the information" ... if "the judgment creditor files a Motion with the court... and serves" the Motion on the Judgment debtor and the Division. *Id.* The judgment debtor and the Division have the opportunity to object to the production of the Employment Information, but the Division's right

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to object is limited. In the case of the Division, the Court must find that the Division has established that disclosure will have a negative effect on one of the enumerated areas related to the Division's core function of administering the Unemployment Insurance Program<sup>2</sup>. *See Utah Code 35A-4-314(2)(b)*.

The debtor's right to object is limited also. The court may order the Debtors to produce the Employment Information which is sought by this Motion. *See Rule 64(C)(2) of the Utah R. of Civ. Proc.* Thus, the judgment debtor does not have a right to object to the production of the Employment Information by the Division.

### **CONCLUSION**

Thus, the Court should grant this Motion and enter an Order requiring the State of Utah, Department of Workforce Services, to provide Plaintiff's attorney with the name and address of the last known employer of the Defendant Luis Gallegos. A copy of the Order that the Court should enter is attached to this Motion as Exhibit B, and served herewith.

Respectfully signed and submitted March 5, 2014.

/S/ Gregory M. Constantino

Gregory M. Constantino

### **CERTIFICATE OF MAILING/DELIVERY**

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<sup>2</sup> The Defendant's wage data was submitted by the Defendant's employer as prescribed by Section 312 of the Employment Security Act. *Utah Code 35A-4-312(1) and (2)*. This information is collected by the Department for the purpose of administering the Unemployment Insurance Program. *Utah Admin. Code R994-102-101*. If the Court, after conducting an evidentiary hearing and taking evidence finds that the release of this information will affect the willingness of employers to report wage and employment information or the willingness of individuals to file claims for unemployment benefits, then the Court may uphold an objection. *See Utah Code 35A-4-314(2)(b)*.

I, the undersigned, hereby certify that a true and correct copy of the foregoing **MOTION FOR ORDER TO PERMIT ACCESS TO DEFENDANT'S EMPLOYMENT RECORDS**, was on this day March 6, 2014, mailed first class, postage prepaid to:

Luis Gallegos  
2261 N 450 W  
CLEARFIELD UT 84015-3529

I certify that on March 6, 2014, a true and correct copy of the foregoing **MOTION FOR ORDER TO PERMIT ACCESS TO DEFENDANT'S EMPLOYMENT RECORDS** was served upon counsel for the Department of Workforce Services, Kathleen Bounous as required by Ut. R. Civ. P. 5(b)(1)(A)(ii) ("... by sending it by email to the person's last known email address if that person has agreed to accept service by email." In this instance, the Department of Workforce Services has agreed to accept service of motions filed under Utah Code Annotated 35A-4-314, and all other corresponding documents associated with such motions, via email, at the agreed upon email addresses of: kbounous@utah.gov and mlmartinez@utah.gov

/s/Luisa F Ocampo  
Luisa F Ocampo